

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HERMÈS INTERNATIONAL and)
HERMÈS OF PARIS INC.,)
)
Plaintiffs,)
)
vs.) No.
) 1:22-CV-00384-JSR
MASON ROTHSCHILD,)
)
Defendant.)
-----)

September 23, 2022
9:32 a.m.

Deposition of BLAKE GOPNIK, held at the
offices of Baker & Hostetler LLP, 45
Rockefeller Plaza, New York, New York,
pursuant to subpoena, before Laurie A.
Collins, a Registered Professional Reporter
and Notary Public of the State of New York.

A P P E A R A N C E S (NOTE ZOOM PARTICIPANTS) :

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(via videoconference)

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2 A P P E A R A N C E S (continued):

3

4 ALSO PRESENT:

5 VALENTINE FADIE, ESQ. (Hermès)

6 (via videoconference)

7 ZEF COTA, Videographer

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1 Gopnik

2 art?

3 A. Business art is art that engages
4 directly and powerfully with -- for want of a
5 better word, with business, with commerce, with a 01:21:31
6 wide range of activities that on the face of it
7 normally might seem as being essentially about
8 finances and commodities but in fact when
9 introduced into the discourse of art seem to have
10 a richer set of resonances. It's a way of using 01:21:46
11 art to look at the world of finance and business
12 by participating in it to a certain extent.

13 I'm sorry, it's a long-winded answer.

14 Q. Are there times when people participate
15 in the world of finance and business and they're 01:22:04
16 not engaging in business art?

17 A. Yes.

18 Q. How can you tell whether someone is
19 engaging in business art or not?

20 A. Through a larger set of contextual 01:22:16
21 clues that tell you, oh, this might be worth
22 looking at as an artistic activity; for instance,
23 in the case of Andy Warhol, because he's generally
24 regarded as an artist and presents himself as an
25 artist. 01:22:32

Gopnik

A. I am obviously speaking widely metaphorically here, and in writing this I'm sure I didn't think through it in great detail. I was trying to conjure an image.

02:29:23

But I assume that a certain kind of traditional Catholic once upon a time would have distinguished between Crowns of Thorns that were on Jesus's head at some point versus one that had been made later. But since I'm not at all convinced there was a Crown of Thorns on Jesus's head, it's an obviously very figurative way of speaking.

02:29:39

Q. And in the example you gave, the one that was made later was the counterfeit?

02:29:58

A. Yes, correct.

Q. I'd like to --

A. I want to clarify, I was speaking metaphorically.

Q. Okay.

02:30:16

I'd like to show you a document that has been previously marked as Exhibit 6.

MR. SPRIGMAN: I want one of these.

THE WITNESS: Yeah, I think they're great.

02:31:01

1 Gopnik

2 A. As with anything else, I really would
3 normally like to study it in greater detail. But
4 my guess is that within the larger context of
5 Mason Rothschild, knowing about his MetaBirkins 02:33:08
6 project especially, this would very much seem to
7 indicate -- because he's touching on Central Saint
8 Martins Parsons, this would seem to set it within
9 an art world context. It seems to be an
10 intervention in art world discourse. 02:33:25

11 Q. Are you familiar with the Parsons
12 School of Design?

13 A. I am.

14 Q. Are you familiar with the logo -- let
15 me ask you, what is the Parsons School of Design? 02:33:48

16 A. Parsons School of Design is part of the
17 New School in New York. It's their design
18 component. It's a venerable design school.

19 Q. Are you familiar with the logo of the
20 Parsons School of Design? 02:34:05

21 MR. SPRIGMAN: Objection.

22 A. I'm not.

23 Q. I'm going to show you what we've marked
24 as Exhibit 194.

25 (Exhibit 194, printout from Wayback 02:34:21

1 Gopnik

2 Machine internet archive, marked for
3 identification.)

4 Q. I'm going to represent to you that this
5 is a page pulled from the Wayback Machine internet 02:34:41
6 archive showing a page from the Parsons Web site
7 as it appeared around 2015.

8 Does this document refresh your
9 recollection as to what the logo of the Parsons
10 school looks like? 02:35:09

11 MR. SPRIGMAN: Objection. I'm going to
12 object to this. You haven't laid any
13 foundation that this is a logo of the Parsons
14 School of Design or -- there's no context on
15 this Web page. I'm not sure what. 02:35:19

16 THE WITNESS: I am concerned about
17 that.

18 MR. SPRIGMAN: The Web page is not --
19 does not look like a Web page that would
20 appear in nature. It looks like -- 02:35:26

21 MR. FERGUSON: Like a page from the
22 Wayback Machine?

23 MR. SPRIGMAN: I know, but it's missing
24 a lot of context.

25 MR. FERGUSON: I'm going to as you not 02:35:36

1 Gopnik

2 to make speaking objections. You've stated
3 your objection.

4 MR. SPRIGMAN: I'm not making a
5 speaking objection. I'm filling in the 02:35:41
6 problem with an exhibit you put in front of
7 the witness, which is something you
8 manufactured and appears to be missing a bunch
9 of context.

10 So that's not a speaking objection so 02:35:48
11 much as an objection against what I consider
12 to be an improper exhibit.

13 Now, if you want to ask him about it,
14 that's fine. But I'm this is beyond the pale,
15 so I will speak my objection. 02:36:00

16 Q. Does this document refresh your
17 recollection of what the logo for the Parsons
18 school looks like?

19 MR. SPRIGMAN: Objection.

20 A. No, I have no knowledge of the logo, 02:36:08
21 what it was or ever had been. Logos change, by
22 the way, very frequently. I wouldn't be surprise
23 if that is no longer the logo and was only briefly
24 the logo.

25 Q. Referring back to Exhibit 6, is it your 02:36:40

1 Gopnik

2 testimony that this T-shirt which presents the
3 name Parsons in red on a white T-shirt is art?

4 MR. SPRIGMAN: Objection.

5 A. Again, that's like asking me if a given 02:36:58
6 urinal is art. It's only art within a context.
7 But this has enough markers that indicate to me
8 that it could very well be playing that kind of
9 role.

10 Q. And what are the markers? 02:37:08

11 A. The most important marker is that it's
12 actually engaging with the art world. There's a
13 rich tradition of artists in the last 20 or 30 or
14 40 years seeing art schools as an important
15 subject to talk about and the way they train 02:37:23
16 people and the way they pretend to give people
17 skills to then become professional artists.

18 There's a very large discourse, in
19 which my wife happens to participate, of people --
20 of artists making work about the nature of art 02:37:36
21 schools.

22 Q. Is this item a counterfeit?

23 MR. SPRIGMAN: Objection.

24 A. Again, a counterfeit is only -- you can
25 only tell when something is a counterfeit or not 02:38:03

Gopnik

within a particular context of use. And it's possible for something to be both an artwork and a counterfeit at the same time.

Q. How is it possible for something to be both an artwork and counterfeit at the same time?

A. Just as Marcel Duchamp's urinal presented in a museum or conceptualized in a museum, conceptualized in an art book, is a work of art. However, if it's presented to someone who desperately needs to urinate, then it can function as a urinal as well. 02:38:27

Artwork often has two separate functions simultaneously.

Q. Would it change your view as to whether the shirt depicted in Exhibit 6 is art if Parsons sent a letter to Mr. Rothschild claiming infringement of their rights and demanding that he stop selling them?

MR. SPRIGMAN: Objection. 02:39:09

A. Not in the slightest.

Q. And why is that?

A. Because -- first of all, the kind of people who send those letters at art schools are usually the legal department, people in charge of

1 Gopnik

2 things like branding. They rarely have connection
3 to the people who make art or teach art.

4 It could be that Parsons sending that
5 letter isn't Parsons art school but simply the 02:39:26
6 people at Parsons only responsible for financial
7 matters, for instance.

8 Q. I'm showing you what we've marked as
9 Exhibit 196.

10 (Exhibit 196, depiction re Babe Ruth, 02:40:02
11 marked for identification.)

12 A. I own four of these. Sorry, I
13 shouldn't be facetious. I said I own four of
14 these, but I was being facetious.

15 Q. I should work for you, then. 02:40:18

16 A. I was being facetious. I don't know if
17 four even exist.

18 Q. Could you identify what's depicted in
19 this exhibit?

20 A. The truth is I can only guess. It 02:40:32
21 seems to be probably a baseball card -- I don't
22 know the year -- an early Babe Ruth baseball card.
23 And in the culture at large we tend to know that
24 these cards are very valuable.

25 However, because I'm ignorant, this 02:40:46